



Reasons for decision

Communications, Energy and Paperworkers Union
of Canada,

complainant,

and

TeliPhone Corp., teliPhone Navigata-Westel
Communication Inc. and 0865944 B.C. Ltd.,

respondent.

Board File: 30094-C

Neutral Citation: 2013 CIRB 698

October 3, 2013

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Richard Brabander and John Bowman, Members.

Counsel of Record

Mr. Donald W. Bobert, for the Communications, Energy and Paperworkers Union of Canada;
Ms. Barbra Miller, for TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and
0865944 B.C. Ltd.

These reasons for decision were written by Mr. John Bowman, Member.

I. Nature of the Complaint

[1] On August 14, 2013, the Communications, Energy and Paperworkers Union of Canada (CEP or the union) filed a complaint pursuant to section 97(1) of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*), alleging that TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd. (the employer), failed to remit union dues to the union, contrary to sections 70(1) and 94(1)(a) of the *Code*.

II. Background

[2] The union filed a number of applications with the Board in December 2012 and January 2013 arising from a change of ownership of 0865944 B.C. Ltd., an employer who was the subject of a certification order with the union that the Board had issued in June 2010. The union filed an application for an order declaring that there had been a sale of business pursuant to section 44 of the *Code*; an application for a declaration that three different corporate entities, including 0865944 B.C. Ltd., were a single employer pursuant to section 35 of the *Code*, and two complaints that the employer had committed certain unfair labour practices contrary to sections 94 and 96 of the *Code*.

[3] On May 23, 2013, the Board issued a decision granting the sale of business application. The Board found that the business of 0865944 B.C. Ltd. had been sold to TeliPhone Corp. and that TeliPhone Corp. was the successor employer for labour relations purposes. The Board certified the union to represent a unit composed of:

all employees of TeliPhone Corp. working in North Vancouver, Vancouver, Victoria, Fort St. John, Squamish, Kelowna, Kamloops, Prince George, Terrace and Williams Lake, British Columbia, in Toronto, Ontario, and in Calgary, Alberta, **excluding** sales, sales support and management employees.

[4] At the time the sale of business was concluded, the union had a collective agreement in effect with 0865944 B.C. Ltd. that did not expire until August 31, 2014. In its sale of business order, the Board specifically found that:

... pursuant to section 44(2)(c) of the *Code*, the parties continue to be bound by the collective agreement between the Communications, Energy and Paperworkers Union of Canada (Local 206) and 0865944 B.C. Ltd., that applied to the bargaining unit on the date of the sale and that is in effect until August 31, 2014.

[5] On July 16, 2013, the Board issued a decision granting the single employer application that the union had filed. The Board found that TeliPhone Corp, teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd. constituted a single employer for the purposes of section 35 of the *Code*. The Board amended the previously issued certification order to add the other employer names to the order.

[6] The union's previous unfair labour practice complaints have been set down for a hearing that is scheduled to commence in January 2014.

[7] On January 23, 2013, the union filed a grievance regarding the employer's failure to deduct and remit union dues, as required by the collective agreement. On July 17, 2013, the parties were advised that the Minister of Labour had appointed an arbitrator to adjudicate the dues grievance as well as four other grievances involving layoffs, layoff letters to employees, wages and vacation pay, and hiring and recall.

[8] On August 14, 2013, the union filed the instant complaint with the Board. The union alleges that the employer has failed to remit any union dues to the union since the sale of business took place, and that the employer is therefore in breach of sections 70 and 94(1)(a) of the *Code*.

III. Positions of the Parties

A. The Complainant Union

[9] The union submits that the employer has failed to remit any dues for the 56 employees that it says are included in the bargaining unit certified by the Board. The union further submits that the employer has continued to refuse to remit dues after the matter was brought to its attention by the union, and subsequent to the union filing a grievance on the issue in January 2013.

[10] While the union acknowledges filing a grievance regarding the dues issue, it submits that the Board has jurisdiction to adjudicate this complaint. In *Sandy Bay Ojibway First Nation*, 2009 CIRB 440, the Board found that the failure of an employer to remit dues to the union is unlawful interference in the administration of the union, contrary to section 94(1)(a) of the *Code*. In *Garda Security Screening Inc.*, 2012 CIRB 620, the Board found that an employer who was chronically late in remitting union dues to the certified bargaining agent was in breach of section 94(1)(a) of the *Code*.

[11] As a remedy for the alleged breach of the *Code*, the union seeks an order requiring the employer to remit to the union all dues owing since December 2012; an order requiring the employer to remit dues in a timely manner in the future; a declaration that the employer has breached sections 70(1) and 94(1)(a) of the *Code*; and an order appointing an officer of the Board to assist the parties in determining the amount of dues that is owing to the union.

B. The Respondent Employer

[12] Counsel for the employer did not dispute the assertion that no union dues had been remitted to the union by the employer. The employer notes that it has filed reconsideration applications and applications for judicial review regarding the Board decision that found there was a sale of business and the subsequent Board decision finding that its three businesses constituted a single employer under the *Code*.

[13] The employer submits that the union's complaint should be dismissed as premature, because the employer has applied to reconsider the previous Board decisions. The employer submits that if both the reconsideration and judicial review applications fail, it would then be appropriate to

consider the union's complaint. The employer also submits that only one unnamed employee, who is on layoff, remains from the group of employees that were members of the union's bargaining unit, and that any order made regarding union dues should apply only to this one employee.

IV. Analysis and Decision

[14] Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed the submissions of the parties and the attached materials, the Board is satisfied that the documentation before it is sufficient for it to decide this matter without an oral hearing.

[15] The union complains that the employer has breached sections 70 and 94(1)(a) of the *Code*, by failing to remit any union dues since it purchased the company. The relevant portion of section 70 reads:

70. (1) Where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union forthwith.

[16] Section 94(1)(a) of the *Code* reads as follows:

94. (1) No employer or person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; ...

[17] There is no dispute regarding the key facts in this matter. Neither party disputes that the collective agreement that the union originally negotiated with 0865944 B.C. Ltd. contains a provision that requires the employer to deduct and remit union dues and that this collective agreement is in effect from September 2011 until August 31, 2014. Neither party disputes the statement that the employer has not remitted any dues to the union since the sale of business took place in December 2012.

[18] The employer has not provided any jurisprudence to support its contention that its applications for reconsideration and judicial review render the union's complaint premature. It is settled law that such applications do not act as a stay on any Board decision or order, see 3329003 *Canada Inc. and Trentway-Wagar Inc.*, 2010 CIRB 493; *Société Radio-Canada*, 2002 CIRB 193; *Greyhound Lines of Canada Ltd.* (1990), 80 di 147; and 90 CLLC 16,029 (CLRB no. 794); and *British Columbia Telephone Company* (1979), 38 di 124; [1980] 1 Can LRBR 340; and 80 CLLC 16,008 (CLRB no. 220). The employer is therefore required to comply with the terms of the collective agreement that is in effect for all of its bargaining unit employees, even though it has filed reconsideration and judicial review applications. The employer submits that there is only one employee that would be affected by an order for remittance of union dues. The union submits that there are 56 employees in the unit. While the Board does not have sufficient information to decide how many employees are in the bargaining unit, dues are normally remitted for all employees in a unit, regardless of whether or not they are members of the union, consistent with the wording of section 70(1) of the *Code* as quoted above.

[19] An employer's failure to comply with the union security provisions in a collective agreement, and to thereby deprive a union of the financial contributions to which it is entitled, constitutes unlawful interference with the administration of a trade union and its ability to represent the employees in the bargaining unit (*Okanagan Helicopters Ltd.* (1985), 62 di 21; 10 CLRBR (NS) 385; and 85 CLLC 16,037 (CLRB no. 521), reversed on other grounds in *Okanagan Helicopters Ltd. v. Canadian Helicopter Pilots' Association*, [1986] 2 F.C. 56).

[20] On the facts before it in this case, the Board finds that the employer has failed to remit the dues to which the certified bargaining agent is entitled, and has thereby interfered in the administration of the union and its representation of employees. The Board therefore finds the employer is in breach of section 94(1)(a) of the *Code*.

[21] As a remedy for the employer's breach of the *Code*, the Board hereby orders that, effective as of the date of this decision, the employer is to immediately commence and to continue deducting union dues from all employees in the certified bargaining unit and to remit those dues to the union in accordance with the terms of the collective agreement between the parties.

[22] With respect to any arrears for past dues that may be owed to the union, the Board hereby requests submissions from each of the parties, within 20 days of the date of this decision, setting out that party's position regarding the amount of union dues that are owing to the union, the period for which they are owing, and each party's proposal as to how such dues should be collected and remitted. Following receipt of such submissions and failing agreement between the parties on this issue, the Board will decide the matter.

[23] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

John Bowman
Member

Richard Brabander
Member